SUPREME COURT, U. S.

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In the
Supreme Court of the United States

OCTOBER TERM, 1968

No. 916

THEODORE VARITIMOS,
PETITIONER,

v.

UNITED STATES OF AMERICA,
RESPONDENT.

SUPPLEMENTAL BRIEF FOR THE PETITIONER TO PETITION FOR A WRIT OF CERTIORARI.

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Since the filing of the petition for a writ of certiorari herein, the Petitioner's last filing, a new case bearing upon this matter has been decided to which this Honorable Court's attention is respectfully called, pursuant to Rule 24(5) of the Rules of this Court.

In *United States* v. *Miller*, ___ F.2d ___ (4th Cir., February 14, 1969), 4 CRIM. LAW REP. No. 24, p. 2497 (March 19, 1969), the Fourth Circuit retroactively applied this Court's decision in *Haynes* v. *United States*, 390 U.S. 85 (1968), to prosecutions under 26 U.S.C. §5814 (1964) and

held such prosecutions to be barred by the Fifth Amendment. Section 5814 is the same section of the National Firearms Act upon which Counts 4 and 11 of the indictment in this case are based and which the First Circuit found does not violate the Petitioner's privilege against self incrimination. Speaking for the Court in *Miller*, Sobeloff, J., stated:

> Given the reasoning of *Haynes* . . . we perceive no distinction of constitutional scope between the two sections [section 5841, involved in *Haynes*, and section 5814, involved in *Miller* and in the instant case] and are persuaded that the Fifth Amendment forbids prosecution under Sec. 5814(a) as well as under Sec. 5841. . . . (Slip opinion p. 10.)

The significance of the Fourth Circuit's decision in the *Miller* case to the pending petition for a writ of certiorari in this case is two-fold. First, it creates a conflict with the decision of the First Circuit in this case. (See Rule 19(b) of the Rules of this Court.) Second, the decision in the *Miller* case, by giving *Haynes* retroactive effect, increases the number of cases which will arise under the National Firearms Act even beyond the "numerosity of firearm cases pending in the inferior federal courts" referred to in *DePugh* v. *United States*, 401 F.2d 346, 351 (8th Cir. 1968) (cited at pp. 11 and 12 of the Petitioner's initial brief), and makes the settlement by this Court of the questions raised here even more imperative.

Conclusion

For the reasons stated above, as well as for the reasons stated in the petition for a writ of certiorari previously filed, it is respectfully prayed that the pending petition for

a writ of certiorari be granted, that the decision of the court of appeals be reversed, and that the judgment of the district court be vacated.

Respectfully submitted,

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